TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~507.~~ 460

THE NEW JERSEY STEAMBOAT COMPANY, PLAINTIFF IN ERROR,

vs.

ALFRED PLEASONTON, COLLECTOR INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 9, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 507.

THE NEW JERSEY STEAMBOAT COMPANY, PLAINTIFF IN ERROR,

vs.

ALFRED PLEASONTON, COLLECTOR INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	*a*	1
Clerk's certificate	*b*	1
Declaration	2	2
Plea	7	4
Agreed facts	9	4
Judgment	13	6
Findings	14	6
Assignment of errors	19	8
Joinder	21	8
Bond	23	9
Citation	26	10
Service	27	10

a UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between The New Jersey Steamboat Company, plaintiff, and Alfred Pleasonton, collector, &c., defendant, a manifest error hath happened, to the great damage of the said plaintiff, as is said and as appears by its complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the capital in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this ninth day of June, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States the ninety-fifth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

b UNITED STATES OF AMERICA,
South. Dist. of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, by virtue of the within writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one to thirty, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The New Jersey Steamboat Company, plaintiff in error, vs. Alfred Pleasonton, collector of internal revenue, &c., defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 27 day of November, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the said United States the ninety-sixth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-c't int.-rev. stamp, canceled.]

(Indorsed:) U. S. circuit court. The New Jersey Steamboat Company v. Alfred Pleasonton, collector, &c. Writ of error.

The within writ of error is allowed. June 9, 1871.

SAM'L BLATCHFORD,
District Judge.

Filed June 10, 1871.

NEW YORK, *June* 10, '71.

Service of copy of within writ is hereby admitted.

NOAH DAVIS, *U. S. Att'y.*

1 U. S. circuit court for the southern district of New York.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court-buildings in the city of New York, of the term of October, 1869, to wit, of the 18th day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Witness the Honorable Lewis B. Woodruff, judge of the said circuit court.

KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that, heretofore, to wit, on the 16th day of December, 1869, in October term, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court-buildings in the city of New York, came The New Jersey Steamboat Co., by W. P. Prentice, their attorney, and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Alfred Pleasonton, being in custody, &c., of a plea of debt; which said declaration follows in these words, that is to say:

2 United States circuit court for the southern district of New York of October term, to wit, of the 15th day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

THE NEW JERSEY STEAMBOAT COMPANY *ag'st* ALFRED PLEASONTON, COLLECTOR OF INternal revenue 4th district, State of New York.

The New Jersey Steamboat Company, plaintiff in this action, by William P. Prentice, esq., its attorney, comes here into court and suggests and gives the court now here to understand and be informed that it is, and at the time hereinafter mentioned was, a corporation duly incorporated, and transacting business in the city of New York under and pursuant to the provisions of an act of the legislature of the State of New Jersey entitled "An act to incorporate the New Jersey Steamboat Company," passed March 2nd, 1854, and the acts amendatory thereof; that heretofore, to wit, on the 9th day of November last, an action was commenced in the supreme court of the city and county of New York, according to the law of the State of New York, and the rules and practice of said court in such case made and provided, by the above-named plaintiff against the defendant above named.

3 That the defendant, afterward, by Edwards Pierrepont, esq., his attorney, duly appeared in said action, and such proceedings were had that, afterwards, and on or about the 6th day of December, 1869, the said action was in due form of law removed by writ of certi-

orari for further prosecution and trial into this court, according to the act of Congress in such case made and provided, and the clerk of the said supreme court did thereupon return the said writ, and did file the same in this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiff now, according to law, by its attorney aforesaid, complains of the above-named defendant, who was at the times hereinafter mentioned, collector of United States internal revenue for the fourth district, State of New York, wherein the plaintiff has its principal business office, in a plea of trespass on the case for promises, for that the said defendant, on the day of the date of this declaration, was indebted to the plaintiff in the sum of seven thousand nine hundred and seventy-two $\frac{66}{100}$ dollars for taxes of two and one-half per cent. on its gross receipts from the transportation of passengers,
4 and from lodgings during the months of April, May, June, July, August, and September, in the year 1869, illegally and erroneously demanded, exacted, and received, at the city of New York aforesaid, by the defendant, then collector of internal revenue as aforesaid, under color of a law of the United States "to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30th, 1864, and the acts amendatory thereof, and paid by the plaintiff under protest in writing, in due form of law, with notice of intention to claim the same in an action at law, with appeal duly taken to the Commissioner of Internal Revenue, and his decision thereon, refusing to refund the same, and at or before the date of this declaration had and received to the use of the plaintiff, and being so indebted, he, the said defendant, in consideration thereof, promised to pay the same amount to the plaintiff, when he, the said defendant, should be thereunto afterwards requested. Yet the said defendant has not paid the same, or any part thereof, though thereto often requested, to the damage of the said plaintiff the sum of ten thousand dollars.

And also for that on the day of the date of this declaration, the said defendant, being indebted to the plaintiff in seven thousand nine
5 hundred and seventy-two $\frac{66}{100}$ dollars for money lent by the plaintiff to the defendant; and in the same amount for money received by the defendant to the use of the plaintiff; and in the same amount for money paid by the plaintiff for the use of the defendant, at his request; and in the same amount for money due from the defendant to the plaintiff for interest of money before then due and owing from the defendant to the plaintiff, and by the plaintiff forborne to the defendant, at the defendant's request, for a long time before then elapsed, in consideration thereof promised to pay the same amount to the plaintiff, on demand; yet he has not paid the same, or any part thereof, to the damage of the said plaintiff the sum of ten thousand dollars; and therefore the said plaintiff brings this suit.

WILLIAM P. PRENTICE,
Attorney for Pl'ff, 29 Wall st., New York.

(Endorsed:) U. S. circuit court. The New Jersey Steamboat Company ag'st Alfred Pleasonton, collector, &c. Copy declaration.
6 W. P. Prentice, att'y for pl'ff, 29 Wall st., New York.

SIR: Please take notice that within is copy of a declaration, this day duly filed herein, and that a rule has this day been entered requiring

the defendant to plead to said declaration within twenty-four days from the service of this copy & notice.

New York, Dec. 15th, 1869.

Yours, &c.,

W. P. PRENTICE,
Att'y for Pl'ff.

To EDWARDS PIERREPONT, Esq.,
Att'y for Def't, 41 *Chambers.*

7 U. S. circuit court, southern district of New York, of October term, in the year of our Lord one thousand eight hundred and sixty-nine.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

ALFRED PLEASONTON, COLLECTOR OF INTERNAL REVENUE, 4th district, State of New York, *ads.* THE NEW JERSEY STEAMBOAT CO.

And the said Alfred Pleasonton, collector of internal revenue, 4th district, State of New York, defendant in this suit, by Edwards Pierrepont, his attorney, comes & defends the wrong & injury, when, &c., & says that he did not undertake or promise, in manner & form, as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country. (And the said plaintiff the like, &c.)

EDWARDS PIERREPONT,
U. S. Att'y.

8 (Endorsed:) Alfred Pleasonton ads. The New Jersey Steamboat Company. Plea. Edwards Pierrepont, def'ts' att'y. To W. P. Prentice, pl'ff's att'y.

9 Therefore, the issue above joined is ordered by the said court to be tried at the circuit court appointed to be held at the United States court-buildings in the city of New York, on the 8th day of December, in the year 1870.

At which day and place, before L. B. Woodruff, esquire, one of the judges of the said circuit court, according to the form of the statute in such case made and provided, come, as well the said plaintiffs as the said defendant, by their respective attorneys aforesaid, and the said attorneys having signed a stipulation waiving a trial by jury, and consenting that the said issue be tried before the judge of the said court, and the said stipulation having been filed with the clerk of the said court. The following facts were agreed upon by the respective parties pursuant to a written stipulation duly filed, viz:

That the plaintiff is a corporation duly organized under the laws of the State of New Jersey, having its place of business in the 4th collection district of internal revenue of the State of New York, in the year 1869, and during that year was the owner of the steamboats Dean Richmond, Drew, and St. John, a night line of boats running between the cities of New York and Albany, in the State of New York, known as the People's Line; and said boats were, during said time, engaged and employed in the business of transporting passengers for hire, leaving New York and Albany on their respective trips at the hour of six p. m., and arriving at their destination at about the same hour in the morning.

That the defendant was, during the same time, collector of internal revenue for the said district, and exacted and collected a tax for the months of April, May, June, July, August, and September, 1869,
10 of 2½ per cent. upon the gross receipts of said company from passengers transported between New York and Albany.

That the amount so collected by defendant, was $7,972.66, of which the sum of $3,140.67 was 2½% on the amount received by plaintiffs from passengers for the use of state-rooms and berths on said boats during said period, and the sum of $4,831.99 was 2½% on the amount received by plaintiffs from passengers for the bare right to be on said boats during said trip without any privilege of berth or state-room.

That said steamboats were amply provided with berths and state-rooms, and the price for the mere passage-money during said months was two dollars, each person; and the price of a state-room berth was one dollar each, and the price of a berth in the lower cabin was fifty cents for each person.

That, if the plaintiff is entitled to recover interest, it is entitled to it from the 25th day of August, 1869, that being an average of the dates of the respective payments.

That said amounts so paid by plaintiff were paid under due and sufficient protest for each of said amounts made at the time of such payments, with notice of intention to reclaim the same.

11 That the accounts of the plaintiff for state-rooms, berth, and the bare right of transportation were kept separately, and no passenger was compelled to take either berth or state-room; but the great majority of passengers took either a berth or state-room in preference to sitting up all night, as many of the lights of the boat in the cabins were turned out at half past ten to eleven o'clock.

That table receipts of the steamboats in question have not been taxed.

That appeals were duly taken from the decision of the assessor and collector enforcing said tax to the Commissioner of Internal Revenue, who affirmed the decision of the assessor and collector.

That the plaintiff, on or before the 22nd day of May, 1869, duly paid for the year 1869 a tonnage duty of thirty cents per ton to the collector of the customs at the port of New York of $2,422.50 on the said steamboats, under an act of Congress entitled "An act amendatory of certain acts imposing duties upon foreign importations," approved March 3d, 1865, said steamboats being at the time duly entered at the custom-house at the port of New York.

That the plaintiff duly paid to the defendant for the year 1869,
12 the special tax for the license required by law under § 79 of the internal-revenue laws for dealers in tobacco, liquor, and for steamers on board of which passengers are provided with food or lodging.

That the action was first brought in the supreme court of the State of New York, November 9th, 1869, and was duly removed by writ of certiorari to the circuit court of the United States for the southern district of New York, December 6th, 1869, on motion of the defendant.

That no part of the aforesaid amounts of money have been repaid to the plaintiff.

Whereupon, all and singular the premises aforesaid being seen, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the said defendant did not undertake and promise in manner and form, as the said plaintiff hath above complained against him.

13 Therefore it is considered that the said plaintiffs take nothing by their said declaration, but that they be in mercy, &c., and that the said defendant do go thereof without day, &c. And it is further considered by the said court now here that the said defendant do recover against the said plaintiffs seventeen dollars and ninety cents for his costs and charges by him about his defence in this behalf laid out and expended, by the said court here adjudged to the said defendant and with his assent, according to the form of the statute in such case made and provided, and that the said defendant have execution thereof, &c.

Judgment signed this 4 day of May, 1871.

R. E. STILWELL,
Dep'y Clerk.

(Indorsed:) U. S. circuit court. Alfred Pleasonton ads. The New Jersey Steamboat Co. Judgment record. Noah Davis, attorney for defendant. Costs, $10.00. Filed May 5, 1871.

14 United States circuit court for the southern district of New York.

THE NEW JERSEY STEAMBOAT COMPANY
ag'st
ALFRED PLEASONTON, COLLECTOR, &C.

This cause having come on for trial before his honor, Judge Woodruff, in the circuit court of the United States for the southern district of the State of New York, on the 8th day of December, 1870, and a jury having been waived by a written stipulation duly filed, and the following case having been agreed upon between the parties by their attorneys, subject to the opinion of the court upon the same, the court found the following facts pursuant to the stipulation as to facts agreed upon by the said parties and filed, viz:

That the plaintiff is a corporation, duly organized under the laws of the State of New Jersey, having its place of business in the 4th collection district of internal revenue of the State of New York, in the year 1869, and during that year was the owner of the steamboats Dean Richmond, Drew, and St. John, a night line of boats, running between the cities of New York and Albany, in the State of New York, known as the People's Line, and said boats were, during said time, engaged
15 and employed in the business of transporting passengers for hire, leaving New York and Albany on their respective trips at the hour of six p. m., and arriving at their destination at about the same hour in the morning.

That the defendant was, during the same time, collector of internal revenue for the said district, and exacted and collected a tax for the months of April, May, June, July, August, and September, 1869, of 2½ per cent. upon the gross receipts of said company from passengers transported between New York and Albany.

That the amount so collected by defendant was $7,972.66, of which the sum of $3,140.67 was 2½% on the amount received by plaintiffs from passengers for the use of state-rooms and berths on said boats during said period, and the sum of $4,831.99 was 2½% on the amount received by plaintiffs from passengers for the bare right to be on said boats during said trip without any privilege of berth or state-room.

That said steamboats were amply provided with berths and state-

rooms, and the price for the mere passenger-money during said months was two dollars each person, and the price of a state room berth was one dollar each, and the price of a berth in the lower cabin was fifty cents for each person.

16 That, if the plaintiff is entitled to recover interest, it is entitled to it from the 25th day of August, 1869, that being an average of the dates of the respective payments.

That said amounts so paid by plaintiff were paid under due and sufficient protest for each of said amounts, made at the time of such payments, with notice of intention to reclaim the same.

That the accounts of the plaintiff for state-rooms, berths, and the bare right of transportation were kept separately, and no passenger was compelled to take either berth or state-room, but the great majority of passengers took either a berth or state-room in preference to sitting up all night, as many of the lights of the boat in the cabins were turned out at half past ten to eleven o'clock.

That table receipts of the steamboats in question have not been taxed.

That appeals were duly taken from the decision of the assessor and collector enforcing said tax to the Commissioner of Internal Revenue, who affirmed the decision of the assessor and collector.

That the plaintiff, on or before the 22nd day of May, 1869, duly paid for the year 1869 a tonnage duty of thirty cents per ton to the collector of the customs at the port of New York of $2,422.50 on the said steamboats under an act of Congress entitled "An act amendatory of

17 certain acts imposing duties upon foreign importations," approved March 3d, 1865, said steamboats being at the time duly entered at the custom house at the port of New York.

That the plaintiff duly paid to the defendant, for the year 1869, the special tax for the licenses required by law under § 79 of the internal-revenue laws, for dealers in tobacco, liquor, and for steamers on board of which passengers are provided with food or lodging.

That the action was first brought in the supreme court of the State of New York November 9th, 1869, and was duly removed by writ of certiorari to the circuit court of the United States for the southern district of New York, December 6th, 1869, on motion of the defendant.

That no part of the aforesaid amounts of money have been repaid to the plaintiff.

A jury is waived, and all the questions involved are submitted to the court.

New York, May 4th, 1870.

EDWARDS PIERREPONT,
U. S. Att'y.
W. P. PRENTICE, *Att'y for Pl'ff.*

18 And thereupon, upon a full consideration of the case stated as aforesaid, the court ordered judgment in favor of the defendant and against the plaintiff, with costs; and to this decision the counsel for the plaintiff then and there duly excepted.

And because none of the foregoing exceptions do appear on the record of the said trial, the said judge, on the prayer of the counsel for the plaintiff, has set his hand and seal hereto, on the 18th day of March, 1871.

L. B. WOODRUFF. [L. S.]

(Endorsed:) U. S. circuit court. The New Jersey Steamboat Company vs. Alfred Pleasonton, collector, &c. Case & exceptions. W. P. Prentice, att'y for pl'ff, 29 Wall st. Filed M'ch 20, 1871.

19 Supreme Court of the United States.

THE NEW JERSEY STEAMBOAT COMPANY, plaintiffs in error,
vs.
ALFRED PLEASONTON, COLLECTOR, &C., defendant in error.
} In errror.

Of December term, in the year of our Lord one thousand eight hundred and seventy-one.

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said New Jersey Steamboat Company, by W. P. Prentice, its attorney, and says that, in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given, was given for the said defendant and against the said plaintiff, whereas by the law of the land, the said judgment ought to have been given for the said plaintiff & against the said defendant; and the said plaintiff in error prays the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it hath lost by occasion of the said judgment, &c.

W. P. PRENTICE,
20 *Att'y for Pl'ff in Error.*

(Indorsed:) U. S. Supreme Court. The New Jersey Steamboat Company, pl'ff in error, vs. Alfred Pleasanton, collector, &c., def't in error. Assignment of errors. W. P. Prentice, att'y for pl'ff in error, 29 Wall st., New York. Filed October 12, 1871.

21 United States circuit court for the southern district of New York.

ALFRED PLEASANTON, COLLECTOR, &C.,
ads.
THE NEW JERSEY STEAMBOAT COMPANY.

And afterwards, to wit, on the first Monday of December, in December term, in the year of our Lord one thousand eight hundred and seventy-one, said Alfred Pleasonton, by Noah Davis, his attorney, freely comes here into court and says that there is no error, either in the record and proceedings aforesaid, or in the giving of the judgment aforesaid, and he prays that the supreme court of adjudicature, before the justices thereof now here, may proceed to examine as well the records and proceedings aforesaid as the maters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

NOAH DAVIS,
U. S. Att'y, & for Pleasonton, Def't.

22 (Endorsed:) Supreme Court of the United States. Alfred Pleasonton, def't in error, ads. The New Jersey Steamboat Company. Filed Nov. 25, 1871.

23 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE NEW JERSEY STEAMBOAT COMPANY, PL'FF in error,
vs.
ALFRED PLEASONTON, COLLECTOR OF INTERNAL revenue, &c. def't in error.

Know all men by these presents that we, The New Jersey Steamboat Company, in the city of New York, Rufus R. Graves of No. 166 Columbia Heights, in Brooklyn, New York, and Levi C. Lathrop, of No. 153 Columbia Heights, Brooklyn, New York, are held and firmly bound unto the above-named Alfred Pleasanton in the sum of five hundred dollars, to be paid to the said Alfred Pleasanton; for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the third day of June, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas the above-named The New Jersey Steamboat Co. have prosecuted their said writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled
24 suit, by the judge of the circuit court of the United States for the southern district of New York: Now, therefore, the condition of this obligation is such, that if the above-named The New Jersey Steamboat Company shall prosecute the aforesaid suit to effect and answer all damages and costs, if said pl'ff in error fail to make its plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] THE NEW JERSEY STEAMBOAT CO.,
By H. B. NORTON, *President.*
RUFUS R. GRAVES. [L. S.]
L. C. LATHROP. [L. S.]

Sealed and delivered, and taken and acknowledged this 3d day of June, 1871, before me.

JOHN A. SHIELDS,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Rufus R. Graves of No. 166 Columbia Heights, Brooklyn, and Levi C. Lathrop of No. 153 Columbia st., Brooklyn, being duly sworn, do*th* depose and say, and each for himself saith that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

RUFUS R. GRAVES.
L. C. LATHROP.

Sworn to this 3d day of June, A. D. 1871, before me.

JOHN A. SHIELDS,
U. S. Com'r.

25 (Endorsed:) The within bond is approved as to its form and amount, and the sufficiency of the sureties.
June 9, 1871.

SAM'L BLATCHFORD,
District Judge.

I consent to the within sureties.

H. E. DAVIES, JR.,
Ass't U. S. Att'y.

Filed this 10 day of June, 1871.

26 The United States of America to Alfred Pleasonton, collector, &c., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of the State of New York, wherein The New Jersey Steamboat Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this ninth day of June, in the year of our Lord one thousand eight hundred and seventy-one.

SAM'L BLATCHFORD,
District Judge.

27 (Indorsed:) U. S. circuit court. The New Jersey Steamboat Company, pl'ff in error, v. Alfred Pleasonton, collector &c., def't in error. Citation. Filed June 10, 1871. W. P. Prentice, att'y for pl'tff in error, 29 Wall st., New York.

NEW YORK, *June* 10, 1871.

& personal service of copy of within citation is hereby admitted.

NOAH DAVIS,
U. S. Att'y.

(Indorsement on cover:) No. 507. The New Jersey Steamboat Company, plaintiff in error, vs. Alfred Pleasonton, collector internal revenue. S. New York C. C. U. S. Filed 9th December, 1871.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE NEW JERSEY STEAMBOAT COMPANY,
Plaintiff in Error,
vs.
ALFRED PLEASANTON, Collector, &c.,
Defendant in Error.
} No. 60.

BRIEF FOR PLAINTIFF IN ERROR.

This cause comes up by writ of error to the Circuit Court of the United States for the Southern District of New York.

The action was brought by the plaintiffs to recover taxes illegally exacted and paid under protest.

The following facts appearing on the trial, and a statement thereof having been agreed upon, and a jury trial having been waived, the Circuit Court gave judgment for the defendant. The plaintiff thereupon sued out a writ of error. Record, p. 4.

The plaintiff is a corporation engaged in the business of transporting passengers on the Hudson river, a distance of 150 miles, between the cities of New York and Albany. Its steamboats were, as required by law, duly entered at the Custom House in the city of New York, and its place

of business was in the Fourth Collection District of Internal Revenue of the State of New York.

The plaintiff paid, May 24, 1869, to the Collector of Customs at the port of New York, the tonnage duty required by the fourth section of the act of Congress passed March 3, 1865, entitled "An act amendatory of certain acts imposing duties upon foreign importations," of thirty cents per ton.

The plaintiff also paid for the year 1869 the tax imposed by section 79 of the Internal Revenue law, on steamers, &c., which provided food or lodging for passengers, in view of the fact that, for an additional compensation, it provided meals and berths for those passengers who wished them.

The passage money was entirely separate and distinct from these other amounts.

The defendant, as collector of internal revenue, collected from the plaintiff $4,831.99, being 2½ per cent. on the passage money received by the plaintiff in the said year, and $3,140.67, being 2½ per cent. on the amount received from staterooms and berths by the plaintiff in the said year, claiming both of the said sums under section 103 of the Internal Revenue law, which said amounts the plaintiff paid separately, under due protest, the total amount being $7,972.60 so paid.

The preliminary steps required by law having been taken, this action was brought to recover the above-mentioned sums.

Assignment of Error.

The errors relied upon by the plaintiff are that by the court below the plaintiff was not held entitled to judgment—

First. For the whole amount of the tax, under the pro-

viso of the act of March 3, 1865, viz: "Provided that the receipts of vessels paying tonnage duty shall not be subject to the tax provided in section 103 of 'An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes,' approved June 30, 1864, nor by any act amendatory thereof."

Second. For the amount of $3,140.67, being the tax on the berth and stateroom receipts, as not being included in gross receipts from passengers, and also because they are covered by the hotel tax.

Argument.

The statutes principally affecting the case are as follows:

12

Act of July 14, 1862, section 15, 13 Stat. at Large, 558.
Act of June 30, 1864, section 103, 13 Stat. at Large, 275.
Act of March 3, 1865, section 4, 13 Stat. at Large, 493.
Act of July 13, 1866, section 9, 14 Stat. at Large, 135.
Act of July 14, 1870, section 25, 16 Stat. at Large, 289. 269.

The ground having been assumed in the court below that section 103 of the act of June 30, 1864, was repealed by section 9 of the act of July 13, 1866, and that the latter act imposed an entirely new tax, to which the proviso in section 4 of the act of March 3, 1865, did not apply, a comparative view of the sections in question of the acts of June 30, 1864, and July 13, 1866, is here presented, the amendments to the act of 1864 in the Tariff Act of March 3, 1865, being inserted in their proper places and designated by quotation marks:

Act of June 30, 1864, §103. (13 St., 274.)

That every person, firm, company, or corporation owning or possessing, or having the care or management of, any railroad, canal, steamboat, ship, barge, canal boat, or other vessel, or any stage coach or other vehicle,

engaged or employed in the business of transporting passengers *or property* for hire, or in transporting the mails of the United States,

or any canal, the water of which is used for mining purposes, shall be subject to and pay a tax of two and one-half per centum *upon* the gross receipts

of such railroad, canal, steamboat, ship, barge, canal boat, or other vessel, or such stage coach or other vehicle: "Provided, That this section shall not apply to those teams, wagons, and vehicles used in the transportation of silver ores from the mines where the same are excavated to the place where they are reduced or worked:"*

Provided, That the *duty* hereby imposed shall not be *charged* upon receipts for the transportation of persons *or property*, or mails between the United States and any foreign port; "but such *duty* shall be assessed upon the transportation of persons *and property* from a port within the United States through a foreign territory to a port within the United States, and shall be assessed upon and collected from persons, firms, companies, or corporations within the United States, receiving such *freight or* transportation:"*

Act of July 13, 1866, §9. (14 St., 98, 135.)

(After other provisions:)

That section 103 (*viz., of act of June* 30, 1864,) *be amended by striking out all after the enacting clause, and inserting in lieu thereof the following:* That every person, firm, company, or corporation owning or possessing, or having the care or management of, any railroad, canal, steamboat, ship, barge, canal boat, or other vessel, or any stage coach or other vehicle, *except hacks or carriages not running on continuous routes*,

engaged or employed in the business of transporting passengers for hire, or in transporting the mails of the United States *upon contracts made prior to August first*, 1866,

shall be subject to and pay a tax of two and one-half per cent. *of* the gross receipts *from passengers and mails* of such railroad, canal, steamboat, ship, barge, canal boat, or other vessel, or such stage coach or other vehicle:

Provided, That the *tax* hereby imposed shall not be *assessed* upon receipts for the transportation of persons or mails between the United States and any foreign port; but such *tax* shall be assessed upon the transportation of persons from a port within the United States through a foreign territory to a port within the United States, and shall be assessed upon and collected from persons, firms, companies, or corporations within the United States, receiving *hire or pay for* such transportation

*So amended March 3, 1865. 13 St., 478.

*So amended March 3, 1865. 13 St., 478.

of persons and mails; and so much of section 109 *as requires returns to be made of receipts hereby exempted from tax when derived from transporting property for hire is hereby repealed*:

and any person or persons, firms, companies, or corporations, owning, possessing, or having the care or management of any toll-road, ferry, or bridge, authorized by law to receive toll for the transit of passengers, beasts, carriages, teams, and freight of any description over such toll-road, ferry, or bridge, shall be subject to and pay a *duty* of three per cent*um on* the gross amount of all their receipts of every description. But when the gross receipts of any such bridge or toll road

shall not exceed the amount necessarily expended to keep such bridge or road in repair, no tax shall be *imposed* on such receipts

Provided also, That any person or persons, firms, companies, or corporations, owning, possessing, or having the care or management of any toll-road, ferry, or bridge, authorized by law to receive toll for the transit of passengers, beasts, carriages, teams, and freight of any description over such toll-road, ferry, or bridge, shall be subject to and pay a *tax* of three per cent. *of* the gross amount of all their receipts of every description. But when the gross receipts of any such bridge or toll-road, *for and during any term of twelve consecutive calendar months*, shall not exceed the amount necessarily expended *during said term* to keep such bridge or road in repair, no tax shall be *assessed upon* such receipts *during the month following any such term:*

Provided, That all such persons, companies, and corporations shall

have the right to add the *duty or* tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitations which may exist by law or by agreement with any person or company which may have paid or be liable to pay such fare to the contrary, notwithstanding:

Provided *further*, That all such persons, companies, and corporations shall, *until the 30th day of April*, 1867, have the right to add the tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitations which may exist by law or by agreement with any person or company which may have paid or be liable to pay such fare to the contrary, notwithstanding. *And whenever the addition to any fare shall amount only to the fraction of one cent, any person or company liable to the tax of two and a half per centum may add to such fare one cent in lieu of such fraction; and such person or company shall keep for sale, at convenient points, tickets in packages of twenty and multiples of twenty, to the price of which only an amount equal to the revenue tax shall be added:*

"And provided further, That no tax under
"this section shall be assessed upon any person,
"whose gross receipts do

And provided further, That no tax under *the foregoing provisions of* this section shall be assessed upon any person, *firm, company, or corporation*, whose gross receipts do

not exceed one thousand dollars per annum.*

not exceed one thousand dollars per annum:
And provided further, That all boats, barges, and flats not used for carrying passengers, nor propelled by steam or sails, which are floated or towed by tug-boats or horses, and used exclusively for carrying coal, oil, minerals, or agricultural products to market, shall be required hereafter, in lieu of enrolment fees or tonnage tax, to pay an annual special tax for each and every such boat of a capacity exceeding twenty-five tons, and not exceeding one hundred tons, five dollars; and when exceeding one hundred tons, as aforesaid, shall be required to pay ten dollars; and said tax shall be assessed and collected as other special taxes provided for in this act.

Points.

I.

The act of March 3d, 1865, expressly exempted the plaintiff from payment of the tax in question.

The history of the legislation on the subject is as follows:

1. The Tariff Act of July 14th, 1862, laid a tonnage duty of ten cents a ton.

2. The Internal Revenue Act of June 30th, 1864, in section 103, laid in addition upon steamboats a tax of 2½ per cent. on gross receipts.

3. The Tariff Act of March 3d, 1865, in section 4, amended the Act of 1862, and limited the imposition of the tax of 2½ per cent. on gross receipts in the following terms: "That § 15 of an act, entitled "An act increasing temporarily the duties on imports, and for other purposes, approved July 14th, 1862, be, and the same hereby is, amended so as to impose a tax or tonnage duty of 30 cents per ton, in lieu of 10 cents, as therein mentioned: *Provi-*

*So amended March 3, 1865. 13 St., 478.

ded, That the receipts of vessels paying tonnage duty shall not be subject to the tax provided in § 103 of 'An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes, approved June 30th, 1864,' nor by any act amendatory thereof." * * *

There is no dispute between the parties to this action so far, but the state of the laws down to 1866 is of importance in the determination of this case.

II.

The proviso above quoted, in sec. 4 of the Tariff Act of March 3d, 1865, had not been repealed in express terms when this cause of action arose, and has not been repealed since. This also is not denied on the part of the defendant in error. We maintain it has not been repealed by implication.

III.

No law imposing a tax of 2½ per cent. on gross receipts from transportation, other than that "to provide internal revenue," etc., etc., of June 30th, 1864, as amended, is or has been in force since 1865, and the tax of 2½ per cent. illegally collected from the plaintiff, for a return of which it now sues, is that laid in sec. 103 of the act of June 30th, 1864, as amended by the act of July 13th, 1866; in other words, it is the tax mentioned in the proviso in sec. 4 of the act of March 3d, 1865.

The act of July 13th, 1866, did not repeal by implication the first proviso of sec. 4 of the act of March 3d, 1865. It was not the intention of Congress to repeal it. "The intention of the law maker constitutes the law." Stewart *vs.* Kahn, 11 Wall., 504.

1. The general intention of the act of 1866, above re-

ferred to, as expressed in the title, was "to reduce internal taxation." It will be shown hereafter that this was also the real intention of the act.

2. It would have been very easy to repeal the proviso in express terms, and it cannot for a moment be supposed that Congress would designedly leave its intention to be spelled out in the manner claimed by the defendant in error.

Dwarris on Stat., Potter's Ed., p. 219.

3. Congress, so late as July 14th, 1870, apparently recognizes the existence and force of the proviso in sec. 4 of the act of March 3d, 1865. Section 25 of the act of July 14th, 1870, (16 U. S. Stat., 256,) entitled "An act to reduce internal taxes, and for other purposes," is in these words: "§ 25. And be it further enacted, that § 15 of the act approved July 14, 1862, entitled 'An act increasing temporarily the duties on imports, and for other purposes,' and 4 of the act in amendment thereof, approved March 3d, 1865, be, and the same are hereby, so amended that no ship, vessel, steamer, boat, barge, or flat belonging to any citizen of the United States, trading from one port or point within the United States, to another port or point within the United States, or employed in the bank, whale, or other fisheries, shall hereafter be subject to a tonnage tax or duty provided for in said acts; and the proviso in § 103 of the 'Act to provide revenue to support the Government and to pay the interest on the public debt, and for other purposes,' approved June 30th, 1864, requiring an annual special tax to be paid by boats, barges, and flats, is hereby repealed."

IV.

In the year 1869, when this tax was laid, section 4 of the tariff act of March 3, 1865, was in full force, and by the proviso therein, "that the receipts of vessels paying ton-

age duty shall not be subject to the tax provided in section 103 of 'an act to provide internal revenue to support the Government, to pay interest on the public debt and for other purposes,' approved June 30, 1864, *nor by any act amendatory thereof.*" The plaintiff was illegally taxed and is now entitled to recover.

It is contended on the part of the defendant in error, and it was held by the court below, that the proviso was repealed by the act of July 13, 1866. If so, it was a repeal by implication only. This is at best, such a "severe and literal construction" as was condemned by this court in

Stewart *vs.* Kahn, 11 Wall., 504.

When Congress, in 1866, found the word "steamboat" in the law written in the statute book and simply left it there, no change in the law was thereby intended or made.

But this construction is not technically correct. After the passage of the act of 1866 as before, there were only two statutes governing the subject, viz: The act of 1864 as amended and the act of 1865. The act of 1864 laid the tax, and the act of 1865 exempted the plaintiff from it. These statutes acted directly upon the tax payer. But the act of 1866 acted only upon the act of 1864, changing some of its provisions, those that we have heretofore shown, but not affecting the plaintiff in error.

No express repeal has been or can be claimed. No notice of the law of March 3, 1865, is taken in the law of 1866, nor until the law of July 14, 1870, wherein it is treated as of full force.

The whole argument for defendant in error seems to turn upon the same points as those urged for the Government in the case of Henderson's tobacco, 11 Wall., 652, wherein as in the case, a later statute, viz, that of July 20, 1868, with new provisions, was claimed to have repealed

the proviso in the law of March 21, 1867, limiting to twenty days the time for commencing proceedings to enforce forfeitures. In that case as in ours, new force was attempted to be given to the general clause, "that all acts and parts of acts inconsistent with the provisions of this act are hereby repealed," but the Government on these points was not sustained, and the rule claimed in one branch of this case that, "where there are two acts upon the same subject, the rule is to give effect to both if possible," was affirmed, though judgment was had on another ground, viz, that the proviso did not cover that case. In accordance with this rule in the case of Fullerton *vs.* Spring, 3 Wis., 667, wherein it is said that "where a repealing act re-enacts a provision of the repealed statute in the same words, such provision is continued in force without any intermission."

It will be shown later that there is no positive repugnancy between the provisions of these laws, such as was held necessary to exist to work a repeal by implication in the case of

Wood *vs.* The United States, 16 Peters, 342.

(See also Potter's Dwarris on Stat., pp. 154, 156, notes 4 and 5;) and that, moreover, however wide an effect may be given to the inconsistencies of the two acts, the proviso of the act of March 3, 1865, may still be held to exist, while force is given in other respects to the amended section 103 of the internal revenue law of 1864. Wherever two acts of the legislature are susceptible of a construction, which will give effective operation to both without doing violence to either, it is incumbent on the court to search for some allowable means to give them such construction.

Attorney General *vs.* Brown, 1 Wis., 513.
Harford *vs.* United States, 8 Cranch, 109.

A repeal of all acts inconsistent with the repealing statute does not affect a statute, not especially mentioned, and which relates to the same subject-matter, and which is not inconsistent with the repealing act.

People *vs.* Durick, 20 Cal., 94.
Ely *vs.* Holton, 15 N. Y., 595.

An express law, creating certain special rights and privileges, is held never to be repealed by implication by any subsequent law couched in general terms, nor by any express repeal of all laws inconsistent with such general law, unless the language be such as clearly to indicate the intention of the legislature to effect such repeal.

The State *vs.* Brannim, 3 Zab., 484.
The State *vs.* Minton, Id., 529.

We submit that a statute amending a prior act does not repeal an intermediate statute, limiting the operation of such prior statute, unless there is a new inconsistency between the amended statute and that limiting its operation. There is no new inconsistency between the amended statute, *i. e.*, the section 103 of the Internal Revenue Law of 1864, as amended in section 9 of the law of 1866, and the tariff act of March 3, 1865. The tax is the same, only one class, *i. e.*, vessels that have paid the tonnage tax, are exempted from it; other vessels, not enrolled, are in another class, and the same reason exists for the same law, in the same language, and thus only can the intention of Congress, expressed in the title to the law of July 13, 1866, *to reduce internal taxation*, be carried out.

V.

It has been shown in the statement, by a comparison of

section 103 of the statute of 1864, with the same section, as amended by section 9 of the act of July 13, 1866, that the two-and-a-half per cent. tax is the same in both, and that the act of March 3, 1865, is, by its language and in its terms, equally applicable to both, if it be still in force.

It remains to us to show that both the act of July 13, 1866, and the act of March 3, 1865, with its proviso, may have force, and that in no other respect than that covered by the proviso, are they inconsistent.

The tonnage duty or tax was only laid upon ships, vessels, or steamers, which, after December 31, 1862, shall be entered at any custom-house in the United States. (Act of July 14, 1862, 12 U. S. Stat., 558.) And it appeared upon the trial that the plaintiff's vessels were of this class. Other steamboats then than those necessarily enrolled in a custom-house, and all the other boats and vehicles, would pay this tax, and this section 103 still stand, even though the vessels paying tonnage dues were exempt by the act of March 3, 1865.

It appears, therefore, that there is no positive repugnance from which a repeal, by implication, might be assumed.

A repeal by implication is not favored by the court.

Wood *vs.* United States, 16 Peters, 342.

The consistency and existence of the provisions of these two laws seem to have been recognized by Congress in the act of July 14, 1870, section 25, in which the tonnage dues imposed by section 4 of the act of March 3, 1865, are abolished, and the proviso requiring a special tax in section 103 of the act of June 30, 1864, is repealed. Thus, at this date, July 14, 1870, both laws, that of 1865 and that of 1864, are treated as in existence.

This, too, is the more reasonable view, in consideration of the fact that double and triple taxes, such as were claimed of the plaintiff in error, are not favored, as was

said by Judge Strong, in the circuit court for the eastern district of Pennsylvania, in the case of Philadelphia and Reading R. R. Co. *vs.* Barnes et al.

2 Albany Law Jour., p. 296.

"There is nothing to warrant the belief that Congress intended to impose a burden upon income derived from one species of property, greater or longer continued, than that imposed upon the income from other property."

VI.

It may be of importance in this discussion to determine from the laws themselves, the intention of Congress, considering not alone the omissions in the statute of 1866, of any words indicating a repeal of the Statute of 1865, but also having regard to "*the occasion and necessity of the law, the defect in former laws and the designed remedy*," in accordance with the Canons of Construction in Statutes.

(*a.*) In 1861 and 1862, the necessity was felt of increasing the revenue in all possible and legitimate ways, and the titles of the various acts indicate this, but in 1866, the act of July 13th, expresses in its title its object "*to reduce taxation.*"

The proposition is here maintained that the act of March 3, 1865, with the proviso of sec. 4, equalized the taxation of steamboats to that on other property, and no intention to repeal it can be discovered in subsequent legislation, but the contrary.

(*b.*) In 1862, a tonnage duty of ten cents per ton was laid, (act of July 14, 1862, 12 U. S. Stat., 558,) and in 1864, another tax on steamboats was laid by the Internal Revenue Law of June 30, 1864, sec. 103, the section in question, viz: On the receipts of vessels.

It is apparent that as carriers the steamboats had thus to

pay double taxes. In March 3, 1865, this double taxation was remedied. The tonnage duty was increased to thirty cents per ton in sec. 4; and vessels paying tonnage duty were exempted from the tax under sec. 103, of the Internal Revenue Law.

(*c.*) The increased tonnage duty of thirty cents, instead of ten cents, imposed by the law of March 3, 1865, prescribes a just and economical method of collecting from steamboats their share in the public burden, upon a definite and easily ascertained basis, and one annual payment, in lieu of monthly instalments. This is an improvement, and the amount of the tax is fairly proportioned to the rates paid by other industries, as e. g. A hotel would pay about $750 to $800 a year for the same accommodations as these boats, which pay on an average over $750 a piece.

Thus a hotel pays $50 for every thousand dollars of its rent, (sec. 79 Internal Revenue Law.) This for a hotel of average rental in a city, accommodating say three hundred guests, would be about $800 a year. Railroads too for the same transportation would pay about the same. It would seem, therefore, that a plan of uniformity and of a systematical reduction had been made as expressed in the proviso. It is not to be presumed, without express words, that Congress, in 1866, intended to take a step backward.

(*d.*) The presumption is not in favor of spelling out a repeal of the proviso, but is against duplicated taxes.

(*e.*) In sec. 79 of the Internal Revenue Law of June 30, 1864, a tax had been laid upon the hotel accommodations of steamboats distinct and separate from any tax under sec. 103, in these words:

"All steamers and vessels upon waters of the United States, on board of which passengers or travelers are provided with food or lodging, shall be subject to, and required to pay $25." Thus, as this section was allowed to stand in 1866, with the law of 1865, plaintiff's boats were already taxed, both as hotels and as carriers, and propor-

tionately to other industries. The whole subject seems, therefore, to have been carefully considered by Congress, and no repeal is found of the law of 1865, or any expression of intention to lay new taxes.

(*f.*) Confirmation of this view is found in the fact found on the trial, and presented by the case, that no claim of right to tax the table receipts of plaintiff's boats has been made, and they were not taxed.

VII.

The claim of the plaintiff in error for $3,140.67, the tax collected from the receipts from staterooms and berths, which is a part of the $7,972.60 claimed in this suit, is upon independent grounds.

First. That the 2½ per cent. tax imposed by section 103 of the Internal Revenue law is a tax on passage money for transportation; that passengers on plaintiff's boats paid that money separately, and the berth money made no part of it. No passenger was in any way necessitated to pay more than his passage money, or take a berth.

Second. That this berth or stateroom money is covered by the hotel tax; that it is taxed, and the tax has been paid under section 79 of the same law; that it is not again laid in a new form in express words, and cannot be implied in section 103.

Third. Even if the plaintiff was liable to an internal revenue "tax on gross receipts," so called, it was not liable to this tax on the receipts for the use of staterooms.

1. The tax is laid on receipts for transportation, not on receipts for lodgings. The tax is laid upon persons owning steamboats engaged in the business of *transporting passengers* for hire.

Again, the statute says the tax shall not be assessed upon "receipts for the *transportation of persons* between

the United States and any foreign port," but "shall be assessed upon the *transportation of persons* from a port within the United States through a foreign territory to a port within the United States." The entire section relates solely to the subject of transportation.

2. The tax is assessed upon gross receipts *from passengers*—that is, from passengers *as such*. In other words, it is assessed upon money paid for transportation.

3. In section 69 of the act of 1864 Congress recognized the fact that passenger steamboats, such as those of the plaintiff, are in some sense *hotels*, and taxed them as such.

4. Stateroom receipts are therefore not "receipts from passengers" within the meaning of the act, but are rather to be considered as hotel receipts, taxable under section 9.

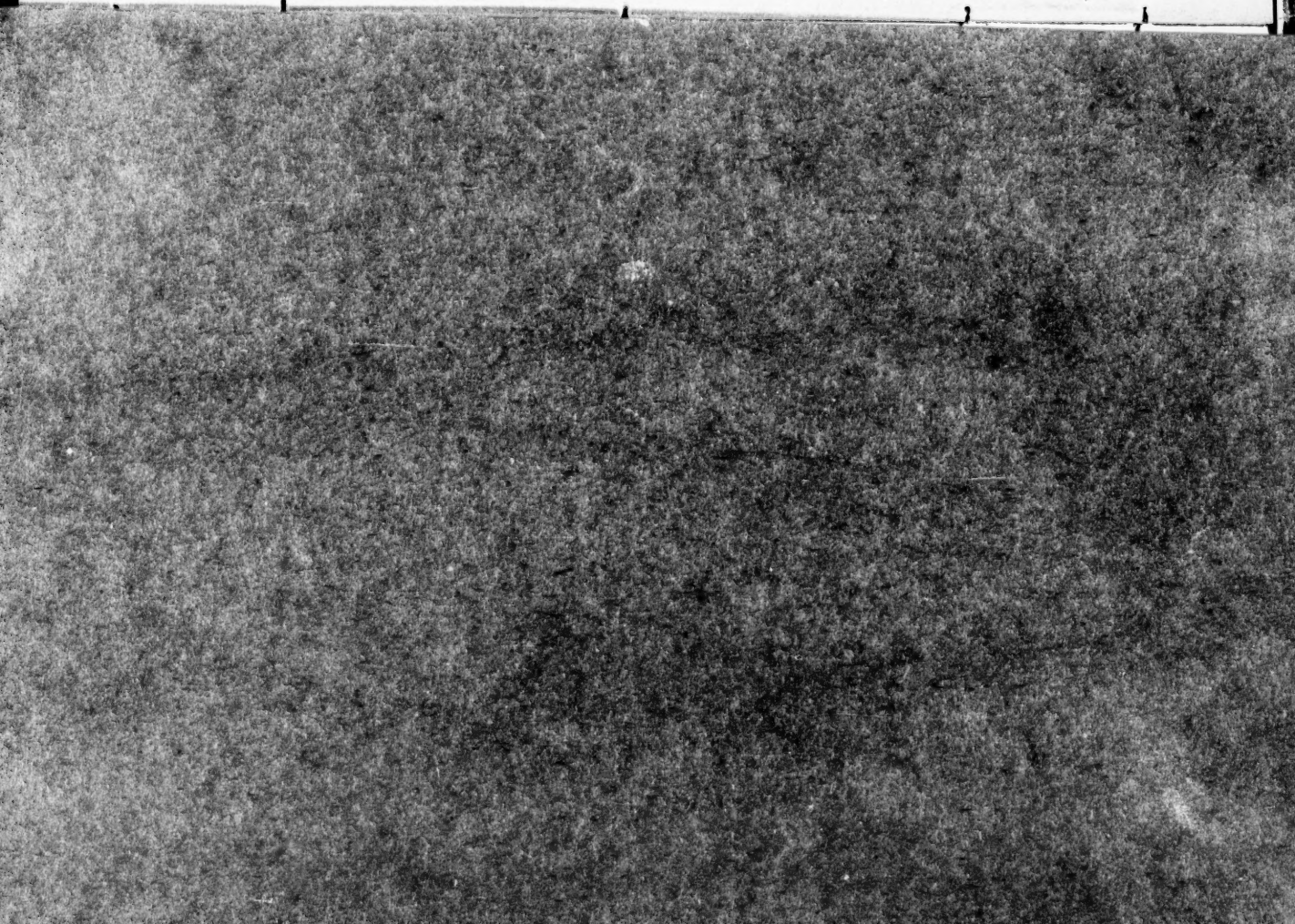
The reasoning on this point seems parallel with that in the case of the Philadelphia and Reading Railroad *vs.* Barnes (cited supra).

Therefore we submit that whatever right existed for the collection of the 2½ per cent. tax on gross receipts, it should not have included the money received from berths and staterooms.

VIII.

Interest is claimed from the defendant in error, the suit being against him personally.

J. M. CARLISLE,
WM. P. PRENTICE,
For Plaintiff in Error.



In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE NEW JERSEY STEAMBOAT COMPANY
vs.
ALFRED PLEASONTON, *Collector, &c.* } No. 60.

In Error to the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR THE DEFENDANT IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE NEW JERSEY STEAMBOAT COMPANY
vs.
ALFRED PLEASONTON, *Collector*, &c.
No. 60.

In Error to the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR THE DEFENDANT IN ERROR.

STATEMENT.

Assumpsit against a Collector of Internal Revenue to recover back a tax assessed on the gross receipts of the plaintiffs "from the transportation of passengers and from lodgings during the months of April, May, June, July, August, and September, in the year 1869," on the plaintiffs' steamboats running between New York and Albany.

The case was tried without a jury upon an agreed statement of facts, of which the following is the material part: Of the amount collected by the defendant, $4,831 99 was two and a half per cent. of the amount received by the plaintiffs from passengers for the "bare right" to be on said steamboats during said trip

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE NEW JERSEY STEAMBOAT COMPANY
vs.
ALFRED PLEASONTON, *Collector*, &c.
} No. 60.

In Error to the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR THE DEFENDANT IN ERROR.

STATEMENT.

Assumpsit against a Collector of Internal Revenue to recover back a tax assessed on the gross receipts of the plaintiffs "from the transportation of passengers and from lodgings during the months of April, May, June, July, August, and September, in the year 1869," on the plaintiffs' steamboats running between New York and Albany.

The case was tried without a jury upon an agreed statement of facts, of which the following is the material part: Of the amount collected by the defendant, $4,831 99 was two and a half per cent. of the amount received by the plaintiffs from passengers for the "bare right" to be on said steamboats during said trip

without any privilege of berth or state-room, and $3,140 67 was two and a half per cent. on the amount received by plaintiffs from passengers for the use of state-rooms and berths on said boats while on the trip. The steamboats were amply provided with berths and state-rooms, and the price for the mere passenger money during said months was two dollars each person, and the price of each state-room berth was one dollar, and the price of each berth in the lower cabin was fifty cents. The accounts of the plaintiffs for state-rooms, berths, and the bare right of transportation were kept separately, and no passenger was compelled to take a berth or state-room, but a great majority took a berth or state-room in preference to sitting up all night. The plaintiffs duly paid for the year 1869 a tonnage duty to the collector of customs of the port of New York, and also paid to the defendant for the same year a special tax for the license required under the internal revenue law. (R., pp. 6, 7.)

Judgment in the circuit court was given for the defendant.

New Jersey Steamboat Company *vs.* Pleasonton, 8 Blatchf., C. C., 259.

ARGUMENT.

So far as appears from the record and from the case in Blatchford, the question in issue between the plaintiffs and the Government is, whether the former were obliged to pay a tax on the amount received by them from passengers on their steamboats as a price of state-rooms

and berths, in addition to the mere charge for transportation.

By the statute of 1864, ch., 173, sec. 103, (13 U. S. Stat., 275,) it is enacted "that every person, firm, company, or corporation owning or possessing, or having the care or management of any railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or any stage coach, or other vehicle engaged or employed in the business of transporting passengers or property for hire, or in transporting the mails of the United States, or any canal, the water of which is used for mining purposes, shall be subject to and pay a duty of two and one-half per centum upon the gross receipts of such railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or such stage coach or other vehicle."

By section 9 of the statute of 1866, ch. 184, (14 U. S. Stat., 135,) the above section, 103, is amended "by striking out all after the enacting clause and inserting in lieu thereof the following: That every person, firm, company, or corporation owning or possessing, or having the care or management of any railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or any stage coach or other vehicle, except hacks or carriages not running on continuous routes, engaged or employed in the business of transporting passengers for hire, or in transporting the mails of the United States, shall be subject to and pay a tax of two and one-half per cent. of the gross receipts from passengers and mails of such railroad, canal, steamboat, ship,

barge, canal-boat, or other vessel, or such stage coach or other vehicle."

By section 70 of the last-named act, (*ibid.*, 173,) "all provisions of any former act inconsistent with the provisions of this act are hereby repealed."

It is difficult to see how, without this last provision, section 103 of the act of 1864 can be otherwise than totally repealed by section 9 of the act of 1866.

United States *vs.* Tynen, 11 Wall., 88.

Comparing the two statutes together, the proper construction of the act of 1866 would seem to be clear. By the act of 1864, steamboat companies like the plaintiffs were obliged to pay a tax of two and one-half per cent. upon their gross receipts, which would cover as well money received as freight, and for carrying the mail, as money received from passengers. By the amendatory act, the tax is limited to the gross receipts from passengers and from mails, and the other receipts of the company are exempted.

When the statute imposes a tax upon "the gross receipts from passengers," it must intend the entire receipts from passengers for their trip between New York and Albany, when the same is received directly by the steamboat company. There may be instances, as in the case of sleeping-cars on railroads, where a distinction is to be made between the amount charged for transportation and the amount charged for sleeping and other accommodations furnished by third persons, and not by the carriers. But, however this may be, in the case of a steamboat company, where the gross

11 Wallace 616
Cherokee Tobacco

receipts are received by the company for its own benefit, and where it furnishes the night accommodations as well as transportation for passengers between two cities, the words in the statute must have their natural meaning. The money received for state-rooms and berths is as much received from passengers as the money received for the fare only; and, by referring to the statute of which this is amendatory, it is evident that the intention of Congress was only to exempt the freight and receipts of that nature.

C. H. HILL,
Assistant Attorney General.